

A RESOLUTION APPROVING A PLAN OF LEASE
FINANCING FOR THE PURPOSE OF ACQUIRING,
CONSTRUCTING AND EQUIPPING A PUBLIC LIBRARY
FACILITY TO BE LOCATED AT 10877 WILLOW DRIVE
NORTH, BEALETON, VIRGINIA

WHEREAS, Fauquier County, Virginia (the "County"), has acquired certain real property and all improvements thereon located at 10877 Willow Drive North in Fauquier County, Virginia (the "Property");

WHEREAS, the County Board of Supervisors (the "Board") has determined that it is in the best interest of the County for the County Administrator, in collaboration with BB&T Capital Markets, the County's financial advisor (the "Financial Advisor"), to solicit proposals from commercial leasing entities to provide financing in connection with the County's acquisition of the Property and the construction and equipment of a County library on the Property (the "Project");

WHEREAS, there have been presented at this meeting (a) a draft of the Prime Lease pursuant to which the Board, on behalf of the County, desires to convey to a commercial leasing entity a leasehold interest in the Property (the "Prime Lease") and (b) a draft of the Lease Agreement pursuant to which the commercial leasing entity will lease the Project to the County (the "Lease Agreement"), both of which the Board proposes to execute or approve to carry out the purposes of the Project and copies of which shall be filed with the records of the Board:

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF FAUQUIER COUNTY, VIRGINIA:

1. The Board approves the lease of the Property to the commercial leasing entity submitting the proposal that the County Administrator determines to offer the most favorable leasing terms to the County (the "Financing Lessor"). Such lease shall be made pursuant to the terms of the Prime Lease provided that the term does not exceed 40 years from the date of execution.

2. The Board approves the lease back of the Project by the County from the Lessor pursuant to the terms of the Lease Agreement provided that: (a) the total of principal components of basic rent (the "Basic Rent") payable under the Lease Agreement shall not exceed \$1,700,000.00 (b) the term of the Lease Agreement shall not exceed ten (10) years from the date of execution, (c) the interest component of Basic Rent payable under the Lease Agreement shall have a "true" interest cost not to exceed 5.5% per year (exclusive of any interest penalties) and (d) payments of Basic Rent (constituting both principal and interest components) shall be payable semi-annually in the amounts and on the dates as shall be determined by the County Administrator.

3. The Board determines that the Project is essential to the efficient operation of the County, and the Board anticipates that the Project will continue to be essential to the operations of the County during the term of the Lease Agreement.

4. The Chairman and Vice-Chairman of the Board and the County Administrator, any of whom may act, are authorized and directed to execute the Prime Lease and the Lease Agreement, which shall be in substantially the forms submitted at this meeting, which are hereby approved, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the officer executing the Prime Lease and the Lease Agreement, such execution to constitute conclusive evidence of his approval of any such completions, omissions, insertions and changes.

5. Such officers of the County as requested by the County Administrator are authorized and directed to execute and deliver all certificates and instruments and to take all actions necessary or desirable in connection with the execution and delivery of the Prime Agreement and the Lease Agreement and the completion of the financing.

6. The obligations of the County under the Lease Agreement shall be limited obligations payable solely from funds to be appropriated by the Board for such purpose and shall not constitute a debt of the County within the meaning of any constitutional or statutory limitation or a pledge of the faith and credit of the County beyond any fiscal year for which the Board has lawfully appropriated from time to time. Nothing herein or in the Lease Agreement shall constitute a debt of the County within the meaning of any constitutional or statutory limitation or a pledge of the faith and credit or taxing power of the County.

7. The County believes that funds sufficient to make payment of all amounts payable under the Lease Agreement can be obtained. While recognizing that it is not empowered to make any binding commitment to make such payments beyond the current fiscal year, the Board hereby states its intent to make annual appropriations for future fiscal years in amounts sufficient to make all such payments and hereby recommends that future Boards do likewise during the term of the Lease Agreement. The Board directs the County's Director of Finance, or such other officer who may be charged with the responsibility for preparing the County's annual budget, to include in the budget request for each fiscal year during the term of the Lease Agreement an amount sufficient to make the payment of all amounts payable under the Lease Agreement. As soon as practicable after the submission of the County's annual budget to the Board, the County Administrator is authorized and directed to deliver to the Lessor evidence that a request for an amount sufficient to make the payment of all amounts payable under the Lease Agreement has been made. If at any time during any fiscal year of the County, through the fiscal year in which the last payment of Basic Rent will be due, the amount appropriated in the County's annual budget in any such fiscal years is insufficient to pay when due the amounts payable under the Lease Agreement, the Board directs the Director of Finance, or such other officer who may be charged with the responsibility for preparing the County's annual budget, to submit to the Board at the next scheduled meeting, or as promptly as practicable but in any event within 45 days, a request for a supplemental appropriation sufficient to cover the deficit.

8. (a) The County covenants that it will not take or omit to take any action the taking or omission of which will cause the Basic Rent payments due under the Lease Agreement to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations issued pursuant thereto (the "Code"), or otherwise cause the interest components of the Basic Rent due under the Lease Agreement to be includable in the gross income of the holder thereof under existing statutes. Without limiting the generality of the

foregoing, the County shall comply with any provision of law that may require the County at any time to rebate to the United States any part of the earnings derived from the investment of the tax-exempt portion of the funds received under the Lease Agreement, unless the County receives an opinion of nationally recognized bond counsel that such compliance is not required to prevent the interest components of Basic Rent due under the Lease Agreement from being includable in the gross income for federal income tax purposes of the holder thereof under existing law.

(b) The County covenants that it shall not permit the proceeds derived from the Lease Agreement to be used in any manner that would result in (a) 10% or more of such proceeds or the facilities financed with such proceeds being used in a trade or business carried on by any person other than a governmental unit, as provided in Section 141(b) of the Code, provided that no more than 5% of such proceeds may be used in a trade or business unrelated to the County's use of the Project, (b) 5% or more of such proceeds being used with respect to any "output facility" (other than a facility for the furnishing of water), within the meaning of Section 141(b)(4) of the Code, or (c) 5% or more of such proceeds being used directly or indirectly to make or finance loans to any persons other than a governmental unit, as provided in Section 141(c) of the Code; provided, however, that if the County receives an opinion of nationally recognized bond counsel that any such covenants need not be complied with to prevent the interest components of the Basic Rent from being includable in the gross income for Federal income tax purposes of the holder thereof under existing law, the County need not comply with such covenants.

9. Such officers of the County as may be requested are authorized and directed to execute an appropriate certificate setting forth the expected use and investment of the funds received under the Lease Agreement, and any elections such officers deem desirable regarding rebate of earnings to the United States, for purposes of complying with Section 148 of the Code. Such certificate and elections shall be in such form as may be requested by bond counsel for the County.

10. Any authorization herein to execute a document shall include authorization to deliver it to the other parties thereto and to record such document where appropriate.

11. All other acts of the officers of the County that are in conformity with the purposes and intent of this Resolution and in furtherance of this financing and the undertaking of the Project are approved and ratified.

12. All resolutions or parts of resolutions in conflict herewith are repealed.

13. This resolution shall take effect immediately.

The undersigned Clerk of the Board of Supervisors of Fauquier County, Virginia, certifies that the foregoing constitutes a true and correct extract from the minutes of a regular meeting of the Board of Supervisors held on the 20th day of May, 2002, and of the whole thereof so far as applicable to the matters referred to in such extract.

WITNESS my signature and the seal of the Board of Supervisors of Fauquier County, Virginia, this 20th day of May 2002.

(SEAL)

G. Robert Lee
Clerk, Fauquier County Board of Supervisors